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JS EPA RECORDS CENTER REGION 5



Date Agril 7, 2005
Initial CM Hereval

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Note	Transmittal	Letter	to Be	included with	Reports
Comm					·

1999 MAR 26 AM 9: 23

FOREST E. YOUNGBLOOD REGISTER OF DEEDS WAYNE COUNTY, MI

QUIT CLAIM DEED

The Grantor, DETROIT COKE CORPORATION, a Michigan corporation, whose address is P.O. Box 09229, Detroit, Michigan 48209, conveys and quit claims to Grantee, ALLIEDSIGNAL INC., a Delaware corporation, whose address is 101 Columbia Road, Morristown, New Jersey 07962, the premises situated in the City of Detroit, County of Wayne and State of Michigan as more particularly described in Exhibit "A" attached hereto and incorporated herein by reference (the "Premises").

This deed is exempt from the Michigan Transfer Tax (i) under MSA Sec. 7.456(5)(a) and (ii) under MSA Section 7.456(26)(a) and (u).

It is the express intention of the Grantor and Grantee that this conveyance shall not in any manner be deemed to be a merger with or extinguishment of the liens and security interests created and evidenced by that certain Mortgage recorded in Liber 20757, Page 24, Wayne County Records (the "Mortgage"), and any liens and security interests created and/or evidenced by all loan and security documents delivered by Grantor in connection with the Mortgage and the Mortgage shall survive the execution, delivery and recording of this Quit Claim Deed.

The Grantor grants to the Grantee the right to make all legally feasible division(s) under Section 108 of the Land Division Act, Act No. 288 of the Public Acts of 1967.

This property may be located within the vicinity of farmland or a farm operation. Generally accepted agricultural and management practices which may generate noise, dust, odors, and other associated conditions may be used and are protected by the Michigan right to farm act.

Dated this 28 day of March, 1999.

WITNESSES:

DETROIT COKE CORPORATION, a Michigan

corporation

By:

Its DREETE.

RA BLOWN

STATE OF NEW YORK

) ss.

COUNTY OF NIAGARA

The foregoing instrument was acknowledged before me this 2 day of March, 1999 by J.D. Clave, the Resident of Detroit Coke Corporation, a Michigan corporation, on behalf of the corporation.

Notary Public,

County Nigotala, New York

My Commission Expires: 3/12/2000

DRAFTED BY:

Ciara M. Comerford
Pepper Hamilton LLP
36th Floor
100 Renaissance Center
Detroit, Michigan 48243-1157

AFTER RECORDING RETURN TO:

Alan M. Greene, Esq.
DYKEMA GOSSETT PLLC
1577 N. Woodward, Suite 300
Bloomfield Hills, Michigan 48304

BH:196012.1 ID HNL

EXHIBIT A (Property Description)

A parcel of land being a part of Private Claim No. 67, 267 and 270 and Lots 13 to 19, inclusive, of William Dwights Subdivision of the fronts of Private Claims 267, 270 and 268, as recorded in Liber 37, Pages 618 and 619, Wayne County Records, and Lots 98 to 101, inclusive of Crawford's Fort Tract being Private Claim 270 in the East part of Private Claim 267 and the West part of Private Claim No. 268, as recorded in Liber 2, Page 6, Wayne County Records, all land being within the City of Detroit, Wayne County, Michigan, more particularly described as follows: Commencing at the intersection of the centerline of Green Avenue with the Southerly line of West Jefferson proceeding thence along said Southerly street line North 59 degrees 22 minutes 59 seconds East 689.67 feet to the point of beginning, continuing thence along said Southerly street line North 59 degrees 22 minutes 59 seconds East 80.20 feet; thence South 28 degrees 23 minutes 31 seconds East 161.92 feet; thence 369.93 feet along the arc of a curve to the left having a radius of 296.31 feet passing through a central angle of 71 degrees 31 minutes 55 seconds with a long chord bearing South 64 degrees 09 minutes 28 seconds East 346.37 feet; thence 67.64 feet along the arc of a curve to the left having a radius of 211.40 feet passing through a central angle of 18 degrees 19 minutes 54 seconds with a long chord bearing North 70 degrees 54 minutes 37 seconds East 67.36 feet; thence North 61 degrees 41 minutes 40 seconds East 73.25 feet; thence South 28 degrees 07 minutes 50 seconds East 972.49 feet; thence South 52 degrees 45 minutes 44 seconds East 655.67 feet to the United States Harbor line; thence along said harbor line the following three courses: South 37 degrees 28 minutes 46 seconds West 873.62 feet; South 29 degrees 31 minutes 46 seconds West 670.02 feet; South 29 degrees 58 minutes 55 seconds West 101.09 feet to the intersection of said harbor line and the centerline of the River Rouge; thence along said River Rouge centerline North 76 degrees 48 minutes 21 seconds West 1723.34 feet; thence North 29 degrees 25 minutes 01 seconds West 1562.34 feet along a line parallel with and 4 feet East of the Westerly line of Private Claim 67 to the Southerly line of West Jefferson; thence along said Southerly line North 59 degrees 22 minutes 44 seconds East 59.40 feet; thence South 29 degrees 25 minutes 31 seconds East 306.90 feet; thence South 57 degrees 56 minutes 29 seconds West 9.70 feet; thence South 29 degrees 25 minutes 01 seconds East 694.43 feet; thence North 59 degrees 16 minutes 46 seconds East 2052.20 teet; thence North 30 degrees 37 minutes 01 seconds West 997.64 feet to the point of beginning. Excepting therefrom that certain parcel of land described in the instrument recorded in Liber 17548, pages 153 to 159, Wayne County Records.

Address: 7819 W. Jefferson Tax Item #: Ward 18, Item 43

.BH 196034 :

To: Sarah Lile & Laura Lodisio Derrick Kimbrough

Subject:

Detroit Coke Status Update Conference Call:

Proposed Date: Sept 30, 1997, 12:30 Chicago time, 1:30 Detroit time.

Purpose: To exchange information on the environmental issues at the Detroit Coke Site.

Topics for Discussion:

Recent TV coverage

Current use of Property and Options for future use.

Community Education Efforts

Status of Corrective Action... what are they going to do? Sharing results, study plans and clean up proposals. When are they going to clean it up?

Status of Deep Well Permitting.

Community Education Efforts.

Status of City of Detroit Legal Actions, Permits and WaterBills

Sediment Survey Plans, MDEQ, EPA, and City Grant

State and Local involvement.

Timelines...surveys, public education, corrective action

What does the future hold for this site (best guesses), and where do we go from here?

Suggested Participants (EPA will set up conference call

Chicago, EPA-5: Laura Lodisio, SEMI

Allen Melcer, RCRA Rich Clarizio, ORC

Derrick Kimbrough, Pub. Affairs

, Brownfields Team

EPA-Grosse Ile: Rose Ellison/ Jason El-Zein...313-692-7689

MDEQ, Lansing: Andrew Hogarth, Assist Chief, ERD...517-373-9838 City of Detroit...313-237-3090...transfer to Sm. Conf. Rm Ex. 2-3199

Sarah Lile/ Willa Williams/ Ross Powers, DEA

Debbie Fisher/ Allen Hayner, P&DD

Brian Morrow, Law

313-224-9035



OLF.10.100(

September 17, 1997

To: Mayor Dennis Archer
Sara Lile, Director Detroit DEQ
Maryann Mahaffey, President City Council
Alan Melcer, USEPA Region 5

RECEIVED

SEP 1 7 1997

CITY OF DETROIT DEPARTMENT OF ENVIRONMENTAL AFFAIRS

Groundwork for a Just World

11224 Kercheval Detroit Mi 48214-3323 (313) 822-2055

Fax: (313) 822-5197 E-Mall: Groundwork@aol.com This is a letter of protest against the proposed use of injection wells, located on the Detroit Coke site, as a commercial waste disposal site. We request response to the following:

- What of the past business history of the company proposing the injection well promotes confidence in their ability to run such a disposal site in an environmentally responsible manner?
- What is the history of tax payment to the City of Detroit does the company making the proposal have? Are there any unpaid back taxes?
- Does the company have a history of environmental liabilities? Unremediated polluted sites?
- What provisions are being made for the safe transport of the industrial wastes?
- Who will bear any liability from accidental spills?

I look forward to hearing from you soon as to these concerns. Before any proposal for injection of hazardous waste is accepted and approved as beneficial to this City and its residents, we must have full understanding of the risks, environmental as well as economic, and citizens must be apprised of such.

I look forward to hearing from you by the end of September.

aretheller

Sincerely yours,

Margaret Weber

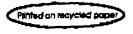
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Sidest of St. Francis (Chianburg, MI)

Sixteer of St, Joseph (AID Sixteer of St, Joseph of the Third Order of St. Franck (BID)

St. Ficinals (Pt) Street, Servants of the Immaculate Heart of Mary (MI)



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Allen melcer
Gras Rudlaff

2ND CASE of Level 1 printed in FULL format.

LORENZO WALLACE, KIP ANWAY, GERALD J. BELANGER, MICHAEL J. BOOTH, LEONARD E. BOULANGER, MILTON BURKE, IGNACIO D. CARANNZA, DENNIS J. FELL, DON E. FINNIGAN, ARLENE E. GUY, GARY HANDLEY, HAROLD B. LAESSER, RICHARD LeBLANC, ROBERT E. PARSONS, GERALD M. PASCHKE, JOANNE M. PINSKY, PATRICK J. RANK, MICHAEL J. RYKWALDER, CARL J. TURLA, and SHIRLEY J. VELLA, for themselves and all other persons similarly situated, Plaintiffs, v. DETROIT COKE CORPORATION, a Michigan corporation, TOLEDO COKE CORPORATION, a foreign corporation, ERIE COKE CORPORATION, a foreign corporation, TONAWANDA COKE CORPORATION, a foreign corporation, JAMES DONALD CRANE a/k/a J. D. CRANE, Jointly and Severally, Defendants. and UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC, JOHN PATRICK CHIRILLO, EDWARD J. DeBOE, HENRY FLORES, DORIAN GRAYS, RONALD H. HEIN, ROBERT L. HOOTON, CHRISTOPHER JENKINS, ROBERT JOHNSON, JOHN PAUL KAMINSKI, CAMILO MUNOZ LOPEZ, LUIS V. LUNA, HARTLEY J. McCRAIG, RONNIE MORRIS, ROBERT NEWKIRK, FREDDIE B. NICHOLS, WILLIAM M. NORRIS, MELVIN P. POCUS, EUGENE ROBINSON, STEVEN ROMACK, DONNIE K. SAYLOR, CLIFFORD LEROY SHORES, JERE SIELOFF, MAJOR SMITH, DARYL E. SNYDER, ISIAH SPRAGGINS, JR., GREGORY J. THEODORAN, WILLIE JOE TUCKER, ROZANA WILLIAMS, JOFN WILSON, and WAYNE ALLEN WISE, for themselves and all other persons similarly situated, Plaintiffs, v. DETROIT COKE CORPORATION, a Michigan corporation; TOLEDO COKE CORPORATION, a foreign corporation; ERIE COKE CORPORATION, a foreign corporation; TONAWANDA COKE CORPORATION, a foreign corporation, and JAMES DONALD CRANE, a/k/a J.D. CRANE, Jointly and Severally, Defendants.

No. 92-CV-72890-DT, No. 92-CV-72891-DT

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

818 F. Supp. 192; 1993 U.S. Dist. LEXIS 4497; 125 Lab. Cas. (CCH) P10,788; 8 BNA IER CAS 581; 8 BNA IER CAS 581

April 8, 1993, Decided

SUBSEQUENT HISTORY: [**1] As Corrected.

COUNSEL: Kim Authur Siegfried, United Steelworkers of America, AFL-CIO-CLC, 7000 Roosevelt Road, Suite 200, Allen Park, MI 48101. MILLER, COHEN, MARTENS, ICE & GEARY, P.C., Michael J. Bommarito, 1400 North Park Plaza Building, 17117 West Nine Mile Road, Southfield, MI 48075. NLG/SUGAR LAW CENTER FOR ECONOMIC AND SOCIAL JUSTICE, Julie H. Hurwitz, Executive Director, 2915 Cadillac Tower, Detroit, MI 48226. PITT, DOWTY & McGEHEE, P.C. Michael L. Pitt, Cooperating Attorney for NLG/Sugar Law Center for Economic and Social Justice, 306 S. Washington - Suite 212, Royal Oak, MI 48067, on behalf of Plaintiffs.

PEPPER, HAMILTON & SCHEETZ, By: Richard A. Rossmann, Wallace R. Haley, 100 Renaissance Center, 36th Floor, Detroit, MI 48243-1157. LEWIS, RICE &

FINGERSH, By: John J. Gazzoli, Jr., Gary M. Smith, 611 Olive Street, Suite 1400, St. Louis, MO 63101, On behalf of Defendant Detroit Coke Corporation.

HONIGMAN, MILLER, SCHWARTZ, AND COHN, David Mikesell, William D. Sargent, Frank T. Mamat, Claudia D. Orr, 2290 First National Bldg., Detroit, MI 48226, On behalf of Defendants Toledo Coke Corporation, Erie Coke Corporation, Tonawanda Coke Corporation, James Donald Crane.

JUDGES: GILMORE

OPINIONBY: HORACE W. GILMORE

OPINION: [*194] OPINION

In these two cases, Plaintiffs claim that Defendants violated the Worker Adjustment and Retraining

Notification Act (hereinafter "WARN Act"), 29 U.S.C. § 2101 et seq., which requires that all employees of a company with at least 100 employees be provided 60 days or more with written notice [**2] in the event of a plant closing or mass layoff. Plaintiffs, comprising both union and non-union workers, allege that Defendant Detroit Coke Corporation closed its coke production facility on September 12, 1991, giving them notice only two hours or less before closing. Plaintiffs filed their Complaints on April 30, 1992, and Defendants removed them to this Court on May 24, 1992.

Before the Court are Defendant Crane's Motion to Dismiss, Defendants' Motions for Dismissal and Summary Judgment, and Plaintiffs' Motion for Consolidation for Trial. For the reasons set forth below, the Court grants Defendant Crane's Motion to Dismiss and Plaintiffs' Motion for Consolidation, and denies Defendants' Motions for Dismissal and Summary Judgment.

I. Defendant Crane's Motion to Dismiss

The first question is whether the Court should dismiss Defendant Crane, who owns and operates the defendant corporations, from the suit because he is not an "employer" under the WARN Act. Based on the Act's language and legislative history and on case precedent, the Court concludes that Defendant Crane is not an employer under the Act.

The WARN Act expressly defines "employer" as:

any business enterprise [**3] that employs --

- (A) 100 or more employees, excluding part-time employees; or
- (B) 100 or more employees who in the aggregate work at least 4,000 hours per week (exclusive of hours of overtime)...

29 U.S. C. § 2101(a)(1). The legislative history provides that:

- [*195] "Employer." The conference agreement retains the Senate Amendment language that the term 'employer' means a business enterprise. The conferees intend that a 'business enterprise' be deemed synonymous with the terms company, firm or business...
- 5 U.S. Code Cong. & Admin. News 2078, 2079 (1988) (emphasis added). In addition, other courts have held that an individual may not be held liable under the Act. Cruz v. Robert Abbey, Inc., 778 F. Supp.

605, 609 (E.D.N.Y. 1991) (dismissing Vice-President and owner of defendant company); Carpenters Dist. Council v. Dillard Dept. Stores, 778 F. Supp. 297, 315-16 (E.D.La. 1991) (dismissing directors and officers).

In response, Plaintiffs argue that Defendant Crane is a proper party based on piercing the corporate veil. The Sixth Circuit states that the factors [**4] to consider in deciding whether to pierce the corporate veil include:

undercapitalization of the corporation, the maintenance of separate books, the separation of corporate and individual finances, the use of the corporation to support fraud or illegality, the honoring of corporate formalities, and whether the corporation is merely a sham.

Laborers' Pension Trust Fund v. Weinberger Homes, 872 F.2d 702, 706 (6th Cir. 1988). The Court finds that Plaintiffs make no showing that any of these factors are Present and, therefore, the Court cannot pierce the corporate veil. As a result, the Court grants Defendant Crane's Motion to Dismiss.

II. Defendants' Motion to Dismiss

Defendants assert that the cases are time-barred by the statute of limitations. They contend that a six month statute of limitations, borrowed from the National Labor Relations Act § 10(b)'s six month limitation, should apply and that all labor related cases, like those under the WARN Act, require this same statute of limitations. For the reasons set forth below, the Court finds that the cases are not time-barred.

The WARN Act has no statute of limitations. Defendants heavily [**5] rely on DelCostello v. Int'l Brotherhood of Teamsters, et al., 462 U.S. 151, 172, 103 S. Ct. 2281, 76 L. Ed 2d 476 (1983), which held that NRLA § 10(b)'s six month period was applicable to a hybrid suit by an employee against an employer for breach of a collective bargaining agreement and against a union for breach of the duty of fair representation. The Court applied this short period because the breach of the duty of fair representation was governed by the six month limitation period for unfair labor practices under the NRLA.

The Court, however, finds Defendants' reliance misplaced. It is significant that the DelCostello Court ruled:

We stress that our holding today should not be taken as a departure from prior practice in borrowing limitations periods for federal causes of action, in labor law or elsewhere. We do not mean to suggest that federal courts should eschew use of state limitations periods any

time state law fails to provide a perfect analogy. On the contrary, as courts have often discovered, there is not always an obvious state law choice for application to a given federal cause of action; yet resort to state law remains the norm for the borrowing of limitations [**6] periods.

Id., 383 U.S. at 171 (emphasis added; cite omitted). Therefore, when a federal statute is silent as to the applicable statute of limitations, the general rule dictates that a federal court is to borrow the state statute of limitations governing the analogous cause of action. Board of Regents v. Tomanio, 446 U.S. 478, 64 L. Ed. 2d 440, 100 S. Ct. 1790 (1980). Accord Wilson v. Garcia, 471 U.S. 261, 85 L. Ed. 2d 254, 105 S. Ct. 1938 (1985). Yet, when federal interests favor a uniform statute of limitations, a court must then determine whether the period should be derived from a state or federal source. If the court chooses a federal source, then it must determine that the analogous federal source truly affords a "closer fit" with the cause of action at issue than does any available state-law source. Lampf v. Gilbertson, 501 U.S. , 111 S. Ct. 2773, 115 L. Ed. 2d 321, 332 (1991). See also DelCostello, supra.

Cases subsequent to DelCostello illustrate the uniqueness of its holding. The Supreme [*196] Court clarified its position in Reed v. United Transportation Union, 488 U.S. 319, 109 S. Ct. 621, 102 L. Ed. 2d 665 (1989), [**7] where it reversed the Fourth Circuit's application of DelCostello because a case for free speech rights guaranteed under the Labor-Management Reporting and Disclosure Act of 1959 was not directly related in any way to collective bargaining or dispute settlement under a collective bargaining agreement (as was the case in DelCostello). Likewise, the Sixth Circuit has applied DelCostello narrowly. For example, in a suit under the NLRA's § 303 by a subcontractor alleging that a union engaged in strikes against general contractors to discourage them from dealing with plaintiff, the court held that, "Attention to the reasoning of DelCostello and its own express limitations indicate that DelCostello is not a 'green light' to apply [§ 10(b)'s limitations period] to all actions in which federal labor law is implicated." Carruthers Ready-Mix, Inc. v. Cement Masons Local Union, 779 F.2d 320, 327 (6th Cir. 1985). n1

n1 The Sixth Circuit has also construed the DelCostello holding narrowly in other cases. See, e.g., Laczay v. Ross Adhesives, A Div. of Conros Corp. 855 F.2d 351, 355 (6th Cir. 1988), cert. denied, 489 U.S. 1014, 103 L. Ed. 2d 188, 109 S. Ct. 1125 (1989) (holding Hoosier Cardinal required applying the most analogous state statute of

limitations to § 301 actions); Laborers' Pension & Trust Fund, supra, 872 F.2d at 706 (6th Cir. 1988) (applying Michigan six-year statute of limitations to ERISA collection action on employee benefit packages), and Craft States S.E. & S. W. Areas Pension Fund v. Kraftco, Inc., 799 F.2d 1098, 1106-07 (6th Cir. 1986) (applying Tenn. six-year limitations statute to ERISA case because it was "not a duty of fair representation case").

[**8]

Before applying the general rule of a state statute of limitations, the Court rejects Defendants' notion that a federal statute of limitations should apply for the sake of uniformity. Defendants are incorrect in claiming that a WARN Act case is similar in purpose and practice to a hybrid NLRA action. The WARN Act diverges from the traditional labor law area governing unions and collective bargaining and where the shorter six-month limitations period may prevail. Instead, the Act provides covered employees with a 60 day notice of plant closing or mass layoff, and this includes notice to non-union employees. Even the legislative history dictates that WARN rights and remedies are "separate" from other employee rights found in other statutes, such as the NLRA, LMRA, ERISA, and state plant closing laws. Senate Comm. Report on 5.538, June 2, 1987, Calender No. 129, Report 100-62, p. 25, Leg. Hist. of S.2527 (WARN), at 843. Furthermore, WARN sponsor, Senator Metzenbaum, said during final debate: "This bill is absolutely neutral with respect to labor law." Congr. Rec., at S8611-12 (June 27, 1988). Since WARN rights have no direct relationship to collective bargaining procedures and because [**9] many WARN Act plaintiffs are not represented by unions, DelCostello's § 10(b) limitations period is inapplicable and thus there is no need to borrow any alleged statute of limitations governing federal labor related suits. Contra Newspaper and Mail Deliverers' Union of N.Y. v. United Magazine Co., 809 F. Supp. 185 (E.D.N.Y. 1992).

Since § 10(b)'s six month statute of limitation does not apply, the Court looks to a comparable state statute of limitations. Defendants assert that the six month limitations period under the Bulk Sales Act of the Uniform Commercial Code applies but fail to illustrate how the WARN Act is analogous to circumstances addressed with bulk sales. Rather, the Court concludes that Michigan's six year statute of limitation for breach of contract applies. M.C.L.A. § 600.5807(8).

In Michigan, the focal point in determining the applicable statute of limitations is the type of interest allegedly harmed. *Barnard v. Dilley*, 134 Mich. App.

375, 378, 350 N.W.2d 887 (1984). The type of interest harmed in the instant suits is contractual. When an employer unilaterally and radically changes an employee's terms of employment without notice and the employee [**10] is suddenly discharged from employment, he essentially is breaching that worker's employment contract. Furthermore, the damages under the Act are the pay and benefits for each day of violation up to a maximum of 60 days. 29 U.S.C. § 2104(a). Obviously, such damages will be calculated by looking to the collective bargaining agreements for union workers [*197] and to the explicit and implied employment contracts for non-union employees.

A six year statute of limitations applies for breach of collective bargaining agreements and for implied employment agreements in Michigan. See Richmond v. Wyeth Lab. Div. of Amer. Home Products, 641 F. Supp. 483 (W.D. Mich. 1986) (six years for breach of implied employment contract); Cole v. General Motors, Corp., 641 F. Supp. 28 (W.D. Mich. 1984) (six years for breach of a collective bargaining agreement); accord UAW v. Hoosier Cardinal, 383 U.S. 696, 16 L. Ed. 2d 192, 86 S. Ct. 1107 (1966) (LRMA's § 301 subject to Indiana's six-year limitations period for breach of contract). Since it is unnecessary to arrive at the most "perfect analogy" in finding a statute [**11] of limitations, DelCostello, 462 U.S. at 171, the Court finds that Michigan's statute of limitations for breach of contract is the most appropriate in these cases and thus denies Defendants' Motion to Dismiss.

III. Defendants' Motions for Summary Judgment

Defendants admit failing to give the required 60 days notice. There are genuine issues of material fact regarding the "faltering company" and the "unforeseeable business circumstances" exceptions. The Court finds that because this case is full of factual issues, Defendants' Motions for Summary Judgment are denied.

First, the "faltering company" exception takes into account whether the defendant corporation closing the plant should be viewed in its company-wide context. 20 C.F.R. § 639.9(a)(4); 54 Fed. Reg. 16061-62; Cong. Rec. S8693 (June 28, 1988); Carpenters Dist. Council, 778 F. Supp. at 303-04. Therefore, whether Defendant Detroit Coke is to be considered a single entity, or whether all the remaining defendants are interrelated and should be treated as a "single employer," is a question of fact remaining.

Specifically, Defendants [**12] clearly believe that only Defendant Detroit Coke's actions are at issue. However, Plaintiffs place into contention whether the four corporate coke plants operated as a "single employer." Plaintiffs present affidavits showing there is evidence of commingling of assets between these entities, such as routine exchanges of inventory, coke production products, equipment, parts, and even cash. See Affidavits of Fell, Laesser, and Guy. They also show that there was centralized control over the plants' labor and shared employees between the plants. See Affidavits of LeBlanc, Fell, Wallace and Laesser. Moreover, the extensive audit of the discovery materials by Kohn, Plaintiffs' financial expert, is replete with examples of how the companies functioned as a single entity with substantial financial arrangements between them.

In addition, there are questions of fact surrounding whether Defendants meet the "faltering company" exception itself. This defense provides that:

An employer may order the shutdown of a single site of employment before the conclusion of the 60-day period if as of the time that notice would have been required the employer was actively seeking capital or business [**13] which, if obtained, would have enabled the employer to avoid or postpone the shutdown and the employer reasonably and in good faith believed that giving the notice required would have precluded the employer from obtaining the needed capital or business.

29 U.S.C. § 2102(b)(1). An employer relying on this exception "shall give as much notice as practicable and at that time shall give a brief statement of the basis for reducing the notification period." 29 U.S.C. § 2102(b)(3).

Defendants contend that this exception is applicable because Crane was seeking additional capital and business from Chemical Bank, NKK Chemical USA, and Allied Signal without which Detroit Coke would not have been able to stay in business. See Affidavit of Crane. However, the circumstances presented by Defendants do not appear to be the type contemplated by the "faltering business" exception. Defendants must show that the capital that was sought would have enabled the employer to avoid the plant closing or postpone it. Carpenters Dist. Council, 778 F. Supp. at 305. Here, rather than keeping the plant [**14] afloat, Crane tried selling it -- an option not covered under the exception. [*198] Local 397 v. Midwest Fasteners, Inc., 763 F. Supp. 78, 82-83 (D.N.J. 1990). Even more striking are the results of Kohn's audit, where he concludes that Crane, or anyone else for acting for Defendants, was not actively seeking capital in a commercially reasonable manner at the time which notice would have been required. n2 As a result, the Court finds that Defendants fail to carry their burden of showing undisputed facts that the defendant companies are not to be viewed in a company-wide context, and that their efforts meet the "faltering company" exception by seeking "reasonable opportunities" to avoid shutdown.

n2 In brief, Kohn shows that 1) Allied was the only source of funds approached between July 12, 1991 and September 6, 1991 to raise capital; 2) the finance team of Defendants and the Coyne Group realized that commercial banks and other financial institutions would not lend money to D-Detroit Coke, given the state of its financial statements; 3) in an effort to obtain funds, Defendant Detroit Coke did not offer any additional sources of collateral or guarantees as security; and 4) the finance team determined that Defendant Detroit Coke's financing needs were \$15,000,000 in the early summer of 1991 and, yet, a July 12, 1991 letter to Allied requested only \$5,000,000. See Affidavit of Kohn.

[**15]

Secondly, there are genuine issues of material fact as to the "unforeseeable business circumstances" exception. This exception applies to "plant closings and mass layoffs caused by business circumstances that were not reasonably foreseeable at the time that 60-day notice would have been required," 20 C.F.R. § 639.9(b), such as "some sudden, dramatic, and unexpected action or condition outside of the employer's control. . . . " 20 C.F.R. § 639.9(b)(1). See also 20 C.F.R. § 639.9(b)(2). Defendants must therefore show two elements to meet this exception: 1) whether the unforeseeable business circumstance they claim caused the plant closure, and 2) whether it should have been reasonably foreseeable. Jones v. Kayser-Roth Hosiery, Inc., 748 F. Supp. 1276, 1285-87 (E.D. Tenn. 1990). Defendants' assertion of this exception fails on the first prong.

Defendants contend that the refusal of NKK Chemical USA's \$459,000 payment caused the plant to shut down. However, this contention is entirely inconsistent with

Crane's earlier dealings that unless Detroit Coke obtained \$ 15 million for their oven and environmental repairs, the plant would close. See Affidavit [**16] of Crane, paras. 8-9. Thus, it did not matter whether NKK Chemical paid or not, because Crane knew as early as sixty days before the closing (July 15, 1991) that \$ 15 million, and not \$ 459,000, would be needed to keep the plant open. Also, Detroit Coke already planned for the closing prior to the cancellation of any payment, according to letters from Detroit Coke to NKK Chemical. See Affidavit of Kohn. As a result, there remains an issue of fact as whether NKK Chemical's nonpayment was an unforeseeable business circumstance, as Defendants claim, thereby causing the plant to close.

The Court denies summary judgment for Defendants based on either the faltering company or unforeseen circumstance exception.

IV. Plaintiffs' Motion to Consolidate for Trial

The Court believes that the cases can be consolidated for trial. Both the Wallace and USWA cases involve claims under the WARN Act for the same plant closing at the Detroit Coke facility on September 12, 1991. Both sets of plaintiffs claimed that they were deprived lawful notice of the closing and both seek the same remedies under the Act. No parties have shown that trying the cases of the union and non-union workers [**17] together would be drastically affected or unwieldy. Because they involve common questions of law and fact, the Court thus consolidates them for trial. Federal Rule of Civil Procedure 42(a).

IT IS SO ORDERED.

HORACE W. GILMORE

United States District Judge

April 8, 1993

STATE OF MICHIGAN



THOMAS J. ANDERSON
DARLENE J. FLUHARTY
STEPHEN V. MONSMA
O. STEWART MYERS
DAVID D. OLSON
RAYMOND POUPORE
HARRY H. WHITELEY



JAMES J. BLANCHARD, Governor

DEPARTMENT OF NATURAL RESOURCES

S.E. Michigan Field Office 15500 Sheldon Road Northville, MI 48167

April 28, 1986

Detroit Coke Corporation Box 09229 Detroit, MI 48209

Detroit, MI 48209 ATTN: Carl Curry,

Manager/Environmental Control

RE: MID 099114704

Dear Mr. Curry:

This letter is to acknowledge receipt of your letter dated April 22, 1986 indicating your compliance program for RCRA deficiencies cited during my inspection on March 6, 1986. I consider your response acceptable at this time and will evaluate the adequacy of your program during future inspections.

Thank you for your cooperation. If you have any questions, please feel free to contact me at (313) 459-9180.

Sincerely,

Faye Dade

Hazardous Waste Division

FD/aw

cc: U.S. EPA, Region V

B. Okwumabua

RCRA INSPECTION REPORT

EPA Identification Number: M	1009911	4204
Installation Name:	Hroit Coke	
Location Address: 78	19 W. Jefferson	
city: Detroit	State: MT 4	823/
Date of Inspection $3 - 6 - 8$	Time of Inspection (from	(to) 3^{62}
Person(s) Interviewed CARL CURRY	Title Enur. Eng.	Telephone 313-842-6284
Inspector(s) Foye: Dope	Agency/Title MDNR/Bnu Quely	Telephone 313-459-9188
Installation Activity (made and	pneith .	
Installation Activity (mark only		Inspection Form(s) _
Treatment/Storage/Disposal p Generation and/or Transports	per 40 CFR §265.1 and/or ation	A
Treatment/Storage/Disposal ((No Generation or Transportation)	А
Generation and Transportation	on .	В,С
Generation Only		В
Transportation Only		ſ

Underground injection of horardons waste (D003). Permitted under the US EPA UIC Program. Rennit # MJ-163-IW-0003 to 0005.

INSPECTION FORM A

Section A: SCOPE OF INSPECTION.

- 1. Interim status standards for treatment storage or disposal of HAZARDOUS WASTES SUBJECT TO 40 CFR 265.1. Complete Inspection Form A sections B, C, D, E, and G.
- Place an "X" in the box(es) corresponding to the facility's treatment, storage and disposal processes, and generation and/or transportation activity (if any). Complete only the applicable sections and appendixes.

Permit app	icatio	n process(es) (EPA Form 3510-3) Insp	ection Form /	A section(s)
80.		storage in containers		I
502		storage in tanks	·	J
то:	П	treatment in tanks		J
504	I	storage in surface impoundment		K,F
TO	: <u>П</u>	treatment in surface impoundment		K,F
D8:	ВП	disposal in surface impoundment		K,F
\$03	I	storage in waste pile		L
D8.		disposal by land application		M,F
D80		disposal in landfill	•	N,F
. тоз	I	treatment by incineration		0/P
Т04	IK	treatment in devices other than tanks impoundments, or incinerators	, surface	Q
Other activitie	<u>:s</u>	Undergrained insection		
GENERATO	OR I	<u> </u>	APPENDIX	GN
TRANSPORTE	R 🎞		APPENDIX	TR
			_	``

- 3. Indicate any hazardous waste processes, by process code, which have been omitted from Part A of the facility's permit application.
- 4. Indicate any hazardous waste processes (by process code and line number on EPA Form 3510-3 page 1 of 5) which appear to be eligible for exclusion per 40 CFR 265.1(c). Provide a brief rationale for the possible exclusion.

)		Section B: GENERAL FACILI	TY STA	NDARDS:	(Part	265 Subpart B)
			YES	NO	NI*	Remarks
1.		the Regional Administrator notified regarding: 265.12				
	g.	Receipt of hazardous waste from a foreign source?				MA
	b.	Facility expansion?				MA
	C•	Change of owner or operator?	-			MA.
2.	Gen	eral Waste Analysis: 265.13				•
	a.	Has the owner or operator obtained a detailed chemical and physical analysis of the waste?	_			
	b.	Does the owner or operator have a detailed waste analysis plan on file at the facility?	<u>/</u>			
)	c.	Does the waste analysis plan specify procedures for inspection and analysis of each movement of hazardous waste from off-site?	entropping.			N/A.
3.	Sec	urity - Do security measures include (if applicable) 265.14	! :			
	a.	24-Hour surveillance?	$\sqrt{}$			
	b.	or i. Artificial or natural barrier around facility? and ii. Controlled entry?	7			
		·	<u>v</u>			
	Ç.	Danger sign(s) at entrance?				
4.	0wn	er or operator inspections: 265.15				
	ð•	Does the owner or operator inspect the facility for malfunctions, deterioration, operator errors, and dischanges of hazardous waste that				
樂		may affect human health or the environment?				

			YES NO) NI	Remarks 4;
b	hav	s the owner or operator e an inspection schedule the facility?		_ (Section (ed property)
С	the	so, does the schedule address inspection of the following ems:	/		
	i.	monitoring equipment?	<u>/</u>		
	ii.	safety and emergency equipment?	<u>/</u> _		
	iii.	security devices?	<u>/</u> _	· ·	
	iv.	operating and structural equip- ment (i.e. dikes, pumps, etc.)?	1_		•
	٧.	type of problems to be looked for during the inspection (e.g. leaky fitting, defective pump, etc.)?	<u> </u>		
- 	vi.	inspection frequency (based upon the possible deterioration rate of the equipment)?	4-		
d		areas subject to spills inspect- daily when in use?	_		
е	an	s the owner or operator maintain inspection log or summary of er or operator inspections?		ina distinguis	
f		s the inspection log contain the lowing information:	4		
	i.	the date and time of the inspection?	<u> </u>	<u> </u>	
	ii.	the name of the inspector?	<u>V</u> _	-	,
	iii.	a notation of the observations made?	V		-
	iv.	the date and nature of any repairs or remedial actions?	<u>/</u> _		
Do pers include		training records 65.16		4	1 . 1 maine comports.
a	. Job	titles?		_ <	will betermine news.
ь	. Job	descriptions?		<u> </u>	

			YES	NO	NI	Remarks
	c.	Description of training?			+	
	d.	Records of training?				
	e.	Did facility personnel receive the required training by 5-19-81?				
	f.	Do new personnel receive required training within six months?		 -	$\sqrt{}$	
	9•	Do personnel training records indicate that personnel have taken part in an annual review of initital training?				
6.	red	required, are the following special quirements for ignitable, reactive, incompatible wastes addressed? 265.1	7			•
	a.	Special handling?				
	b.	No smoking signs?		/	*******	
	ċ.	Separation and protection from ignition sources?	/			• -

Section C: PREPAREDNESS AND PREVENTION: (Part 265 Subpart C)

1.	Maintenance and Operation of Facility: 265.31	YES NO NI Remarks
	Is there any evidence of fire, explosion, or release of hazardous waste or hazardous waste constituent?	Constants Remarks On July Program.
2.	If required, does the facility have the following equipment: 265.32	
	a. Internal communications or alarm systems?	
	b. Telephone or 2-way radios at the scene of operations?	
	c. Portable fire extinguishers, fire control, spill control equipment and decontamination equipment?	
	Indicate the volume of water and/or f	foam available for fire control:
3.	Testing and Maintenance of	
٥.	Emergency Equipment: 265.33	a recol
	a. Has the owner or operator established testing and maintenance procedures for emergency equipment?	conecol brodeon.
	b. Is emergency equipment maintained in operable condition?	
4.	Has owner or operator provided immediate access to internal alarms? (if needed) 265.34	
5.	Is there adequate aisle space for unobstructed movement?	·
6.	Has the owner or operator attempted to make arrangements with local authorities in case of an emergency at the facility?	

Section D: CONTINGENCY PLAN AND EMERGENCY PROCEDURES: (Part 265 Subpart D)

YES NO NI Remarks

- 1. Does the Contingency Plan contain the following information: 265.52
 - a. The actions facility personnel must take to comply with §265.51 and 265.56 in response to fires, explosions, or any unplanned release of hazardous waste? (If the owner has a Spill Prevention, Control, and Countermeasures (SPCC) Plan, he needs only to amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with the requirements of this Part (as applicable.)

Covered under program.

- b. Arrangements agreed by local police departments, fire departments hospitals, contractors, and State and local emergency response teams to coordinate emergency services pursuant to §265.37?
- c. Names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinators?
- d. A list of all emergency equipment at the facility which includes the location and physical description of each item on the list and a brief outline of its capabilities?
- e. An evacuation plan for facility personnel where there is a possibility that evacuation could be necessary? (This plan must describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes?)
- 2. Are copies of the Contingency Plan available at the site and local emergency organizations? 265.53

Section E: MANIFEST SYSTEM, RECORDKEEPING, AND REPORTING: (Part 265 Subpart E)

						YES	NO	NI	Remarks	
*	1.	Use	of M	Manifest Syst	em 265.71					
	1	a.	proc proc (Par the gene	cessing each ticularly se signed manif	d in §265.71 fo				NA.	
		b.		records of pained for 3 y	ast shipments ears?					·····
*	2.	req	uiren	e owner or op nents regardi ancies? 20					MA.	
*	of	on-s	ite 1	facilities th	or operators at do not ff-site sources	i .				
	3.	0pe	ratin	ng Record 2	55.73			.1		
•		a.	mai: reco	s the owner ontain an oper ord as required73?	ating	<u>C</u>	افس میں 	jer Jic	proce pom-	
		b.	cont	s the operati tain the foll ormation:						
į			i.	of each wast storage, or) and date(s) e's treatment, disposal as 40 CFR Part 265					
			ii.	each hazardo facility? (should be cr to specific	n and quantity of ous waste within This information coss-referenced manifest number accompanied by st.)	the on				
		***i	ii.	A map or dia	gram of each		·			

^{***} only applies to disposal facilities

		•	152	NO	NI	Remarks
		showing the location and quantity of each hazardous waste? (This information should be cross-referenced to specific manifest number, if waste was accompanied by a manifest.)				
	iv.	Records and results of all waste analyses, trial tests, monitoring data, and operator inspections?			•	
	٧.	Reports detailing all incidents that required implementation of the Contingency Plan?			-	
	vi.	All closure and post closure costs as applicable?				
4.	Availa	bility of Records 265.74				
		l facility records required 40 CFR Part 265 available for tion?	1			·
5.1	**Unmani	fested Waste Reports 265.76				
	ha ge wi	as the facility accepted any exardous waste from an off-site enerator subject to 40 CFR 262.20 thout a manifest or or shipping aper?				
	of de ar	"a" is yes, provide the identity the source of the waste and a escription of the quantity, type, and date received for each unmaniested hazardous waste shipment.				

^{**} Not applicable to owners or operators of on-site facilities that do not receive any hazardous from off-site sources.

Section F - GROUNDWATER MONITORING (Part 265 Subpart F)

Complete this section for facilities that treat, store, or dispose of hazard-ous waste in landfills, surface impoundments and/or by land treatment.

,	11	4h- a.m.a. a. a.a.a.a.a.a.a.a.a.b.	YES	NO	NI	Remarks
1.	fac	the owner or operator of the ility implemented a ground-er monitoring system? 265.90				covered les c progra
	If	"no", Skip to number 11.				
2.	fac gro	the owner or operator of the ility implemented an alternate undwater monitoring system as cribed in 265.90(d)?				
	If If	"yes", skip to number 12. "no", continue				
3.	sys	s the groundwater monitoring tem meet the following re- rements of 265.91:				
	a.	At least one well installed hydraulically up-gradient from the limit of the waste management area?			_	•
		Indicate the total number of up-gradient wells.				
	b.	At least three wells installed hydraulically down-gradient at the limit of the waste management area?				
		Indicate the total number of downgradient wells.				_
	c.	Are the number, locations, and depths of all wells sufficient to yield groundwater samples that are representative of groundwater under the facility?	-			•

. ,	Section G - CLUSURE AND PO		USUKE	(rart 2	LOS Subpare a)
		YES	NO	NI	Remarks und.
Closur	re 265.112				a more of
	s the facility closure lan available for inspection?		ì .	***********	Remarks under FC/CF
b. Do	oes the plan identify:				٠ -
i.	maximum extent unclosed dur- ing facility life?				
ii.	maximum hazardous waste in- ventory?				
iv.	estimated year of closure?				
٧.	schedule of closure activities?				
c. Ha	as closure begun?				
Post-0	Closure 265.118				
	s the post-closure plan available or inspection?				
b. Do	pes this plan contain:				•
i.	description of groundwater monitoring activities and frequencies?				
ii.	description of maintenance activities and frequencies for		-		
	AA. integrity of cap, final cover, or containment structures, where applicable	-	************	arte nario	· · ·
	BB. facility monitoring equip-				
iii.	<pre>ment name, address, and phone number of person or office to contact during post-closure care period?</pre>				
c. Ha	as the post-closure period begun?				
	the written post-closure cost stimate available? 265.144				

***plies only to disposal facilities.

	Section 1 - OSE AND MANGEMENT OF	CONTAIN	EKS 1	rart 20	
		YES	NO	NI	Remarks to have been done
1.	Are containers in good condition? 265.171				Remarks Hain a Cre by Asi
2.	Are containers compatible with waste in them? 265.172				`
3.	Are containers managed to prevent leaks? 265.173			Westerland	
4.	Are containers stored closed?				
5.	Are containers inspected weekly for leaks and defects.				
6.	Are ignitable and reactive wastes stored at least 15 meters (50 feet) from the facility property line? (Indicate if waste is ignitable or reactive).	265.176			
7.	Are incompatible wastes stored in separate containers? (If not, the provisions of 40 CFR 265.17(b) apply). 265.177				
8.	Are containers of incompatible waste separated or protected from each other by physical barriers or sufficient distance?			·	

Section J - TANKS (Part 265, Subpart J)

YES NO NI Remarks

1.	Are tanks used to store only those wastes which will not cause corrosion, leakage or premature failure of the tank? 265.192
2.	Do uncovered tanks have at least 60 cm (2 feet) of free-board, or dikes or other containment structures?
3.	Do continuous feed systems have a waste-feed cutoff?
4.	Are waste analyses done before the tanks are used to store a substantially different waste than before?
5.	Are required daily and weekly inspections done? 265.194
6.	Are reactive & ignitable wastes in tanks protected or rendered non- reactive or non-ignitable? 265.198 Indicate if waste is ignitable or reactive. (If waste is rendered non-reactive or non-ignitable, see treatment requirements.)
7.	Are incompatible wastes stored in separate tanks? 265.199 (If not, the provisions of 40 CFR 265.17(b) apply.)
8.	Has the owner or operator observed the National Fire Protection Associations buffer zone requirements for tanks containing ignitable or reactive wastes?
	Tank capacity:gallons
	Tank diameter:feet
	Distance of tank from property line feet
	(See table 2 - 1 through 2 - 6 of NFPA's "Flammable and Combustible Liquids Code - 1977" to determine compliance.)

Section A: Scope	Se	ec	t	i	on	Α:	Scope	e
------------------	----	----	---	---	----	----	-------	---

Complete this Appendix if the owner or operator of a TSD facility also generates hazardous waste that is subsequently shipped off-site for treatment, storage, or disposal.

Section B:	MANIFEST	REQUIREMENTS	(Part	262,	Subpart B)

SECL	1011	b. MANTIEST REGOTREMENTS (FAIL 202, Subpart	D)			
			YES	NO	NI	Remarks
(1)		s the operator have copies of the manifest ilable for review? 262.40			<u> </u>	No chament
(2)	mon	mine manifests for shipments in past 6 ths. Indicate approximate number of ifested shipments during that period.			•	normose
(3)	fol cop fes	the manifest forms examined contain the lowing information: (If possible, make ies of, or record information from, manities) that do not contain the critical ments). 262.21				
	a.	Manifest document number?				
	b.	Name, mailing address, telephone number, and EPA ID number of Generator			·	
	c.	Name and EPA ID Number of Transporter(s)?			-	-
	d.	Name, address, and EPA ID Number Designated permitted facility and alternate facility?				
	e.	The description of the waste(s) (DOT shipping name, DOT hazard class, DOT identification number)?				
	f.	The total quantity of waste(s) and the type and number of containers loaded?				**************************************
	g .	Required certification?				
	h.	Required signatures?				
(4)	Rep	ortable exceptions 262.42				
	a.	For manifests examined in (2) (except for slenter the number of manifests for which the signed copy from the designated facility wiment.	gene	rator	has <u>N</u>	OT received a
	b.	For manifests indicated in (4a), enter the has submitted exception reports (40 CFR 262)	numbe .42)	r for to th	which e Regi	the generator onal Administra-

4/82-A

not logged in - inspection forme not completed Et

RCRA	Inspection	Report

EPA Identification Number: M 1	099114	1704
Installation Name: Detroit Co	oke Corp.	
Location Address: 7819 West	- Sefferson 2.0. f	Box 09229
City: Detroit	State: Mi. 4820	9,
Date of inspection: $\frac{7/13/82}{}$	Time of inspection (from)	1:80 p (to) 3:000
Person(s) interviewed	Title	Tel ephone
John T. Ward	Plant Supt.	313) 842-6222
•		
Inspector(s)	Agency/Title	Tel ephone
William E. Stone	MDNR, WQD	313 675-0860
Installation Activity (mark only one	box)	Inspection Form(s)
Treatment/Storage/Disposal per 40 Generation and/or Transportation	CFR 265.1 and/or	A
	neration or Transportation)	Α
☐ Generation and Transportation		B, C
☐ Generation only		В
TT Transportation only		c i

JUL 22 1982 ACT 64

RCRA Inspection Report

Detroit Coke Corp. MID099114704

The facility notified on January 2, 1981 that they were disposing of EP Toxic wastes by underground injection.

Inspection found that the facility is injecting gas scrubber water from the coke ovens and contaminated runoff from various portions of the plant. The waste is high in ammonia. The plant has no byproducts plant. The waste is not EP Toxic or characteristic and does not to my judgement, appear on any list.

The underground injection at the plant is covered by a UIC program permit and is exempt from Part 265 requirements. The facility has met the generator, on site disposal, requirements of 262.10.

sc

RECEIVED
JUL 22 1982
ACT 62



BOX 09229/DETROIT, MI 48209/(313) 842-6222

U.S.E.P.A. Region V UIC Section WD-17J 77 West Jackson Chicago, IL 60604

Attn: Mr. Allen Melcer

Dear Allen,

Enclosed you will find copies of past spill reports with respect to the Detroit Coke plant location. This was to be included with the RFA Corrective Action information, as discussed earlier this year.

The information includes the Introduction to a 1979 SPCC Plan, which descibes two spills (less than 100 gallons each) during the 1970's and the other is a report from the U.S. Coast Guard escribing a sheen on the Rouge River which originated from the a parking lot at Detroit Coke in December 1990.

If there are any questions, please feel free to contact me at 313-842-6222.

Sincerely,

Carl Curry T

RECEIVED

APR 2 2 1992

April 16, 1992

Era The WAY

					. 7		
• .			(_ ,		
DEPARTMENT OF TRANSPORTATION U. S. COAST GUARD CG-3639 (Rev. 6-79)	ATION GUARD WATER POLLUTION VIOLATION REPORT						
INSTR: Prepare in triplicate. Retain	one for cas	e file. Submit origi <mark>nal a</mark> nd	d copy.				
REPORTING UNIT				DATE OF VIOLAT	1		
USCG MARINE SAFETY OF	FICE DE			15 DEC 90	MP90013054		
1. TIME OF OCCURRENCE	2. LOCAT		CHARGE DATA				
1100 APPROX.		OIT COKE INC.					
3. WATER BODY	DDING	TI COMB INC.	4. MATERIAL				
ROUGE RIVER			MISC. WAS	TE OIL			
5. QUANTITY		6. SOURCE					
			PROCESSING I		·		
7. CAUSE			8. DISCHARGE				
9. REMARKS		TV 40 GED 1			3		
A DISCHARGE		NED IN 40 CFR : AS DEFINED IN :			· A		
		PART II – REI	PORTING DATA		• · · · · · · · · · · · · · · · · · · ·		
1. NAME OF PERSON REPORTING	3		2. ADDRESS OF	PERSON REPORT	TING		
EDDIE TERRY		i.	P/N313 84	2-4400			
3. GOVERNMENT AGENCY RECE	IVING REP	PORT	4. DATE/TIME	OF REPORT			
U.S. COAST GUARD				90 / 1115			
5. WAS THE PERSON REPORTING	THE INCI	DENT EMPLOYED BY (OR ACTING IN BE	HALF OF THE VIC	DLATOR?		
YES NO	DAIRC	OTHER U.S. C	ON COTTABLE OF	COCTE DEVENO	<u>π</u>		
6. NOTIFICATION PASSED VIA 7. OTHER AGENCIES NOTIFIED	□ NAC	MOINEN U.S. C	CAST GUARD		TED (Time/Date)		
MICHIGAN DEPARTMENT (F NATUE	RAT. RESOURSES	15 DEC 90 / 1130				
9. REMARKS							
	•						
NONE		DAGT III C			·		
1. NAME OF ONSHORE/OFFSHOR	RE EACH IT		ACILITY DATA	ONSHORE/OFFS	HORE FACILITY		
	ie i Adreii	•	7819 W. JEFFERSON AVE				
DEMOCTIL COVE THE			DETROIT, MI 48232				
DETROIT COKE INC.		 	4. PERSON-IN-CHARGE				
PROCESSING FACILITY				LLEN (plant	manager)		
5. NAME OF OWNER/OPERATOR			6. ADDRESS OF OWNER/OPERATOR				
		•					
DETROIT COKE INC.			SAME AS ABOVE				
7. REMARKS			CRID AS ABOVE				
NONE							
		PART IV —	VESSEL DATA				
1. NAME OF VESSEL			2. NATIONALIT	Γ Y	3. CALL SIGN/OFFICIAL NO.		
4. GROSS/NET TONNAGE	5. FUEL/	CARGO CAPACITY	6. HOME PORT		7. VESSEL TYPE		
8. NAME OF OWNER/OPERATOR	<u> </u>		0.4000500.00				
6. HAME OF OWNER/OPERATOR			a. WOUNESS OF	OWNER/OPERAT	IUN		
10 NAME OF LOOM ACCOUNT		44 4000000	NE 1 0041 4054				
10. NAME OF LOCAL AGENT			11. ADDRESS C	F LOCAL AGENT			
12 MACTER	112 11055	ISE/DOC NO	14 REDCOM (N	CHARGE	15 LICENSE/DOC NO		
12. MASTER	13. LICEN	ISE/DOC. NO.	14. PERSON-IN	-UMANGE	15. LICENSE/DOC. NO.		
16. CERTIFICATE OF FINANCIAL SIBILITY (Number and expirati	L RESPON- on date)	17. OCMI ACTION	.1	18. OCMI FII	LE#		
19. REMARKS							

Section C: PRE-TRANSPORT REQUIREMENTS (Part 262, Subpart C)

	•	YES	NO	NI	Remarks
7.	Is waste packaged in accordance with DOT regulations?	1	-		
	(Required prior to movement of hazardous waste off-site) 262.30	••••••			
2.					
3.	If required, are placards available to transporters of hazardous waste? 262.33				
4.	On-site accumulation of generated hazardous waste it generates either (A) in its storage with 40 CFR 262.34 [see 265.1(c)(7)]. Option and containers. If the installation elects options: See 40 CFR 262.34 January 11, 1982 Research	Facility B restription A, ion B, co	[265. cts a check	1(b)]	or (B) in accordance cumulation to tanks box and skip
	a. Is each container clearly marked with the start of accumulation date?	******			Chapten .
	b. Have more than 90 days elapsed since the date inspected in (a)?				
	c. Do wastes remain in accumulation tanks for more than 90 days?				
	d. Is each container and tank labeled or marked clearly with the words "Hazardous Waste"?				·
Sec	tion D: - RECORDKEEPING AND REPORTING (Part 262	?, Subpar	t D)		
1.	Are all test results and analyses needed for hazardous waste determinations retained for at least three years? 262.40	YES	NO 	NI	Remarks
Sec	tion E: - INTERNATIONAL SHIPMENTS (Part 262, Su	ıbpart E)	/	/	
1.	Has the installation imported or exported Hazardous Waste? 262.50		<u>/</u>		
	(If answered Yes, complete the following as applicable.)				
	a. Exporting Hazardous waste; has a generator:				

PARATK - WIT	NESSES AND OTHER P	ERSONS MENTIONED IN THE REPORT
NAME		EMPLOYER
ANTHONY L. MARQUETTE ADDRESS110 MT. ELLIOTT AVE		U.S. COAST GUARD
	40007 4000	E5/BM2
DETROIT, MI	ZIP 48207-4380	CONNECTION WITH THE CASE
TELEPHONE NUMBER		INVESTIGATING OFFICER STATEMENT ATTACHED YES NO-
β13 ₁ 568 - 9580		ENCLOSURE NUMBER _SEE T/O SUMMARY
NAME THOMAS KIMBERLING		EMPLOYER U.S. COAST GUARD
ADDRESS 110 MT. ELLIOTT AVE		POSITION
DETROIT, MI	_{71P} 48207–4380	E4/MST3
	ZIP 40207 4300	CONNECTION WITH THE CASE INVESTIGATING OFFICER
B13; 568=9580		STATEMENT ATTACHED , YES -NO-
NAME		EMPLOYER
EDDIE TERRY		ALLIED SIGNAL INC.
ADDRESS 1200 ZUG ISLAND RD		POSITION
DETROIT,MI	zıp 48232	TANKERMAN CONNECTION WITH THE CASE
TELEPHONE NUMBER		CONNECTION WITH THE CASE REPORTING PARTY
913 ¹ 842 - 4400		STATEMENT ATTACHED YES NO ENCLOSURE NUMBER
NAME	**-	EMPLOYER
PAT RYAN		DETROIT COKE INC.
ADDRESS7819 W. JEFFERSON AVE	4=	POSITION PLANT FOREMAN
DETROIT, MI	ZIP 48232	CONNECTION WITH THE CASE
TELEPHONE NUMBER	i.	*ACCOMPANIED INVESTIGATORS STATEMENT ATTACHED *YES* NO
B13 842-6222		ENCLOSURE NUMBER
NAME MARTIN ALLEN		EMPLOYER COVER THE
	_	POSITION POSITION
ADDRESS7819 W. JEFFERSON AVE	40222	PLANT MANAGER
DETROIT, MI	ZIP 48232	CONNECTION WITH THE CASE ACCOMPANIED INVESTIGATORS
TELEPHONE NUMBER		STATEMENT ATTACHED -YES- NO
B13 842-6222		ENCLOSURE NUMBER
NAME		EMPLOYER
ADDRESS		POSITION .
•	ZiP	COMMECTION WITH THE CASE
TELEPHONE NUMBER	ZIP	CONNECTION WITH THE CASE
		STATEMENT ATTACHED YES NO
ADD SUPPLEMENTAL LIST IF REQUIRED F	OR COMPLETE LIST	ENCLOSURE NUMBER
NONE TAKEN		- SAMPLES
1. TAKEN FROM		
DATE AND TIME TAKEN	TAKEN BY	WITNESS
2. TAKEN FROM	<u> </u>	
DATE AND TIME TAKEN	TAKEN BY	WITNESS
3. TAKEN FROM		
DATE AND TIME TAKEN	TAKEN BY	WITNESS
4. TAKEN FROM		
DATE AND TIME TAKEN	TAKEN BY	WITNESS
5. TAKEN FROM		
DATE AND TIME TAKEN	TAKEN BY	WITNESS
6. TAKEN FROM	•	
DATE AND TIME TAKEN	TAKEN BY	WITNESS
7. TAKEN FROM		
DATE AND TIME TAKEN	TAKEN BY	WITNESS
8. TAKEN FROM	1	
DATE AND TIME TAKEN	TAKEN BY	WITNESS
9. TAKEN FROM	Tangaran	T
DATE AND TIME TAKEN	TAKEN BY	WITNESS
10. TAKEN FROM	TAKENBY	Interest Co.
DATE AND TIME TAKEN	TAKEN BY	WITNESS
11. TAKEN FROM DATE AND TIME TAKEN	TAKEN BY	WITNESS
12. TAKEN FROM	1 TANKEN BY	MILINESS
12. ICHETTION	1	T
DATE AND TIME TAKEN	TAKEN BY	WITNESS

	PART VII - PHOTOGRAPHS	
1. NUMBER TAKEN	2. TYPE OF FILM	3. ENCLOSURE NUMBER
. 12	110 color film	3
DEMARKS		

6 PHOTOGRAPHS ENCLOSED AND THE REMAINING 6 PHOTOGRAPHS ARE ON FILE AT MSO DETROIT

PART VIII - LIST OF ENCLOSURES

- (1) STATEMENT OF MST3 KIMBERLING
- (2) NOTICE OF FEDERAL INTREST
- (3) PHOTOGRAPHIC EVIDENCE
- (4) CHART OF AREA
- (5) PIPING DIAGRAM FOR OUTFALL
- (6) LAYOUT OF DETROIT COKE

PART IX - INVESTIGATORS SUMMARY

- 1. On 15 DEC 1990 at Approx. 1130 Group Detroit was notified of a sheen that was covering approximately 1/4 to 1/2 the width of the old channel of the Rouge River, the reporting party was Mr. Eddie Terry who is employed by Allied Signal, which is located just downstream from the discovered source. MSO Detroit investigators BM2 MARQUETTE and MST3 KIMBERLING were notified at approx. 1225 and proceeded to the reported area of the sheen.
- At 1400 MSO Investigators arrived at Allied Signal and immediately observed the then heavy rainbow sheen that was in the Rouge River. Moored at Allied Signal was a barge, investigators checked area around the barge for a possible source, none were noted. Investigators questioned the tankerman about any recent spills or other problems, he stated that there had been no transfer between Allied and His barge. Investigators then checked

further upbound and found that the pollution of ceased. previously. At 1430 Investigator attempted to locate who was responsible for the outfall. During the course of investigating ownership investigators talked to the Security police at Detroit Coke who when asked, claimed ownership of the outfall. The security guard was notified of the problem and immediately contacted the plant foreman. At 1440 Mr. Pat Ryan (plant foreman) arrived on scene and was taken down to the outfall and shown the pollution. At 1450 Mr. Ryan had stated that he would gather some sorbent boom and deploy it around the outfall, and stated that the Plant Manager had been notified and was enroute to the plant. At 1510 Mr. Ryan arrived back on scene with another worker and sorbent boom which he deployed at that time. At 1521 Mr.Martin Allen (plant manager) arrived and directed his personnel. Mr. Allen was then addressed by the investigator and issued a Notice of Federal Interest and was directed on what action was needed for the cleanup effort.

3. The information as provided supports the following conclusion: That an oily substance was discharged, in such a quantity that may be harmful, and did indeed cause a visible sheen on a navigable water of the U,S, (Rouge River), it did originate from an onshore facility; that was determined to be. Detroit Coke Inc. in Detroit, MI.

PART X - CLEANUP OR OTHER MITIGATION ACTION

DETROIT COKE EMPLOYEES DEPLOYED SORBENT BOOM AROUND OUTFALL AND REMOVED HEAVY POCKETS OF PRODUCT

	PACT

UNKNOWN

ACTION TAKEN TO PREVENT RECURRANCE

SORBENT BOOM TO BE REPLACED AROUND OUTFALL AS NEEDED WHILE FACILITY CONDUCTS INVESTIGATION AS TO CAUSE

SIGNATURE OF I.O.	SIGNATURE OF CO	DATE
In thous marguello	Small Day	16/91
Milhough I agreed	10 41 4.	A PEA II
ANTHONY 1. MARQUEDTE BM2, USCG	By Direction	
/ /:: / PART XI		

ZJ 5CG STATEMENT M		•

MST3 KIMBELLE

ME AND DATE OF STATEMENT:	0800/1808141	
TIME AND DATE OF INCIDENT:	1480 15021.90	

AT APPROX. 1400 ON 15 DEC 90 MEO DETROIT BMZ MARQUETTE AND I ARRIVED AT ALLIED SIGNAL WHILE RESPONDING TO A POLLUTION REPORT. UPON ARRIVAL, I NOTICED A HEAVY SHEEN EXTENDING APPROXIMATELY 1/4 TO 1/2 THE WIDTH OF THE ROUGE RIVER. WE CHECKED THE IMMEDIATE AREA AND THE BARGE WHICH WAS MOORED AT ALLIED SIGNAL AND FOUND NOTHING SIGNIFICANT. THE POLLUTION WAS OBVIOUSLY COMING FROM UPSTREAM.

WE THEN PROCEEDED TO INVESTIGATE; BY FOOT, UPBOUND FROM THE BARGE. THE SHEEN HAD STOPPED APPROXIMATELY 1/2 WAY ALONG DETROIT COKES SHORELINE. WE THEN BACK TRACKED ABOUT 100FT TO A SMALL OUTFALL WHICH WAS HIDDEN IN THE GRASS. A CONSTANT FLOW OF SHEEN COULD BE SEEN COMING FROM THIS OUTFALL. ALSO, ROCKS LOCATED IMMEDIATELY BELOW THE OUTFALL, WERE ACTING AS A COLLECTION POINT. THE PRODUCT CONTAINED BY THESE ROCKS WAS VERY EMULSIFIED AND APPROXIMATELY 1/2IN THICK.

WE THEN MET WITH DETROIT COKE SECURITY PERSONNEL. IT WAS DETERMINED THAT THE OUTFALL DID BELONG TO DETROIT COKE. THE PLANT FOREMAN WAS NOTIFIED AND DETROIT COKE PERSONNEL PROCEEDED TO CONTAIN THE OIL WITH SORBENT BOOM.

[]

SIGNATURE:

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MSTED U.S. C. 4

WITNESSED BY

INTRODUCTION

This Spill Prevention Control and Countermeasure (SPCC) Plan for the Detroit Coke Corporation has been prepared in accordance with the U.S. Environmental Protection Agency Regulation on Oil Pollution Prevention (40 CFR 112; 38 FR 34164 December 11, 1973; amended by 39 FR 31602, August 29, 1974 and 41 FR 12657, March 26, 1976). By this plan, Detroit Coke Corporation has the commitment of manpower, equipment, and materials required to expeditiously control and remove any harmful quantity of oil discharged. This plan follows the guidelines for the prevention and implementation of a spill prevention control and countermeasure plan as set forth under Part 112.7.

112.7 (a) A facility which has experienced one or more more spill events within twelve months prior to the effective date of this part should include a written description of each such spill, corrective action taken and plans for preventing recurrence.

On November 9, 1973, the plant (owned and operated by Allied Chemical) experienced a spill when an indeterminate amount (less than 100 gallons) of oil and tar residue was washed from an abandoned sewer line by a ruptured fire main. The sewer system subsequently was pumped out and plugged with concrete. All connections between the abandoned sewer system and the operating sewer system have been eliminated.

On May 13, 1974, the plant (owned and operated by Allied Chemical) experienced a spill (less than 100 gallons) caused by corrosion of the No. 6 spiral heat exchanger. The heat exchanger was isolated from the system and repaired. Subsequently, the plant replaced all heat exchangers and conducted regular inspections to minimize the possibility of future failure of the spiral heat exchangers.

TATE OF MICHIGAN



NATURAL RESOURCES COMMISSION

AS J. ANDERSON

LENE J. FLUHARTY

PHEN V. MONSMA

O. STEWART MYERS

DAVID D. OLSON

RAYMOND POUPORE

HARRY H. WHITELEY

JAMES J. BLANCHARD, Governor

S.E. Michigan Field Office 15500 Sheldon Road Northville, MI 48167

DEPARTMENT OF NATURAL RESOURCES

RONALD O. SKOOG, Director

March 31, 1986

Detroit Coke 7819 W. Jefferson Detroit, MI 48231 Attn: Carl Curry

Environmental Engineer

RE: MID 099114704

Dear Mr. Curry:

On March 6,1986, acting as a representative of the United States Environmental Protection Agency, I performed an inspection of your facility located at the above address to evaluate compliance of that facility with the requirements of Subtitle C of the Resource Conservation and Recovery Act (RCRA) as amended.

Detroit Coke is permitted under the U.S. EPA UIC Program. Under this program, the facility is exempted from portions of the RCRA requirements. However, any above ground storage and treatment of hazardous waste is regulated. I have determined that facility has a totally enclosed treatment system and no above ground accumulation and treatment of hazardous waste.

Under the UIC Program, the permittee is subject to the General Facility Standard described in 40 CFR Part 264 Subpart B. Also, as a generator of hazardous waste, you are required to comply with all applicable provisions under 40 CFR Part 262. As a result of that inspection, it has been determined that the above facility is in violation of some of the requirements of Subtitle C of RCRA. Specifically, the following was found:

1. 40 CFR §264.18 - Personnel Training.
The facility is required to provide training for employees involved in waste handling and document their training program.

You are requested to respond to this letter by April 28, 1986, providing documentation to this office regarding those actions taken to correct these violations. If you have any questions regarding this matter, please feel free to contact me at (313) 459-9180.

Sincerel

Faye Dade

HAZARDOUS WASTE DIVISION

cc: U.S. EPA, Region V

B. Okwumabua

R1026-1 5/85